IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10764 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL LALJIBHAI SHIVABHAI

Versus

DANUJI AMTHAJI THAKORE

Appearance:

HL PATEL ADVOCATES for Petitioner

MR TUSHAR MEHTA for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/12/2000

ORAL JUDGEMENT

1. Heard learned counsel appearing for the respective parties. It reflects from the record and proceedings and from the order in question that respondent No.1-Danuji Amthaji Thakor had filed Election

Petition No.1 of 2000 into the Court of learned Civil Judge (J.D.) at Dasada and also taken out injunction application Exh.5 and obtained ex-parte ad interim order in his favour, restraining the petitioner from functioning as a member of the Taluka Panchayat. Against the said order dated 9-10-2000, the the petitioner-original defendant No.1 has filed this petition.

2. This Court (Coram P.K.Sarkar, J.) vide order dated 11-10-2000 stayed the order passed by the learned Civil Judge (J.D.), in Election Petition No.1/2000, dated 9-10-2000. The order passed by the Court below in Election Petition No.1/2000, dated 9-10-2000 is required to be quashed and set aside because the petitioner has already been declared elected and, therefore, he cannot be restrained from functioning as a member of the Taluka Panchayat. Whereas learned advocate for the respondent No.2 Mr. Tushar Mehta has argued that the order passed by the Court below is an ex-parte ad interim injunction and, therefore, it is better that the petitioner should apply before the Court below and the Court below should decide application Exh.5 on merits. Looking to the facts and circumstances of the case I am of the opinion that if any interim order is passed in the election petition and by way of interim order the elected member is prevented from functioning as a member of the Taluka Panchayat, then it is nothing but to allow the petition at the interim stage and the Court cannot restrain petitioner from functioning as a member of Taluka Panchayat and it does not come in the ambit of Order 39 of the Code of Civil Procedure. Hence, the interim order passed by the Court below is required to be quashed and set aside and if the same will not be quashed, then the whole purpose of filing the petition will be frustrated. Even there is a provision in the act itself that the election petition should be disposed of within a stipulated period. Keeping in mind the above aspects of the matter, the order dated 9-10-2000, passed by the Court below in Election Petition No.1/2000 is required to be quashed and set aside.

4. As a result of the aforesaid discussion, the petition is allowed. The order dated 9-10-2000, passed by the learned Civil Judge (J.D.), Dasada, in Election Petition No.1/2000 is hereby quashed and set aside. The learned Civil Judge (J.D.) Dasada, is hereby directed to dispose of Election Petition No.1/2000 within a period of one month from the date of receipt of this order. Rule made absolute to the aforesaid extent.

(R.P.Dholakia, J.)

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